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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of

Inquiry Concerning the Deployment of Advanced
Telecommunications Capability to All Americans
in a Reasonable and Timely Fashion, and Possible
Steps to Accelerate Such Deployment Pursuant
to Section 706 of the Telecommunications Act of
1996

CC Docket 98-146

**COMMENTS OF THE COALITION OF UTAH INDEPENDENT INTERNET SERVICE
PROVIDERS**

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SUMMARY

The Coalition of Utah Independent Internet Service Providers submits these comments to summarize its members' experience with US WEST's roll-out of its xDSL service. The Coalition believes that its member ISPs' treatment at the hands of US WEST, which has bottleneck control over the local loop component of xDSL service, makes the situation of the Utah ISPs like that of canaries in a coal mine. These comments are, then, offered as an early warning of how competition can be smothered where there is monopoly power and imperfect regulation.

These comments are directed to the vexed facts of competition in the new xDSL Utah market. However, because the Utah Coalition shares the more general concerns of retail ISP's across the country, it joins in the Comments of Retail ISP's, being filed today under separate cover.

Utah ISP's compete with US WEST affiliate uswest.net in providing Internet access. At the same time, Utah ISPs are entirely dependent on US WEST for essential components of DSL service. US WEST has used its control to foreclose CLEC's from providing high speed data transport services.

US WEST has also discriminated by

-- delays in providing services to customers of Utah Coalition ISPs as compared with customers of uswest.net, and

-- marketing and sales arrangements which favor its affiliate.

Such service discrimination is especially anticompetitive in fast-moving high technology markets where gaining early adopter customers is critical, and where ISP's compete on quality and responsiveness of service.

This and other anticompetitive conduct warrants action by this Commission to protect, preserve, and promote competition. The steps the Utah Coalition suggests include:

- **First**, for the data transport segment of high speed DSL-based Internet access, the ILECs such as US West must be barred from foreclosing access to competing local carriers. This means proscribing bundling xDSL services with frame relay or other services used in transporting data between an ISP's location and individual end users' xDSL-equipped loops. The ILEC should not be allowed to foreclose this segment of the market by leveraging their control of the loops.
- **Second**, for the Internet access segment of high speed DSL-based information services. ILECs must be barred from any form of discrimination favoring their ISP affiliates in the course of selling telecommunications services (such as xDSL).
- **Third**, the Commission should require that cost-based tariffs be filed for DSL services to prevent cross-subsidies.

- **Fourth**, in order to enhance competition in high speed DSL-based services, the ILECs should be obliged to offer clean, unswitched point-to-point copper transmission paths between end users and ISP-designated locations. This would enhance competition by allowing ISPs and their customers to develop independent high-capacity connections using their own xDSL customer premises equipment ("CPE"), as free as possible from potential anticompetitive interference from the ILECs.

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The Coalition of Utah Independent Internet Service Providers ("CUIISP" or "Utah Coalition") is a Utah non-profit corporation consisting of twenty-seven Internet service providers ("ISPs") providing Internet access services throughout Utah.¹ US WEST Communications, Inc. ("US WEST") is an Incumbent local exchange carrier ("ILEC") offering local exchange services and other telecommunications services in Utah. US WEST offers Internet access services in Utah, through "uswest.net," an affiliated retail department selling Internet access services to consumers.

The Utah Coalition files these comments because the Coalition and its members believe that their experience in the roll-out of high speed Internet connectivity in Utah will benefit the Commission and its staff in reviewing the role of competition in broadband Internet access. US WEST has used its control of the local loop to try to stifle competition in broadband technologies that enhance Internet access. The Coalition believes that its experience -- which may be likened to the canary in the coal mine, now very short of breath -- serves as an early warning that conditions are necessary to protect competition elsewhere for high speed connectivity over the local loop.

These comments are directed to the facts of competition in the new xDSL Utah market, in the face of US WEST's control over the local loop. However, because the Utah Coalition shares the more general concerns of retail ISP's across the country, it joins in the Comments of Retail ISP's, being filed today under separate cover.

I. How DSL is Structured in Utah

Digital Subscriber Line ("DSL") service is designed to provide a digital voice and data connection over copper wires at speeds of 256 kbps and higher. Most customers who take DSL service will use it to increase the speed of their Internet data transmission. Although DSL-based service may be seen by consumers as a single Internet support service, on the supply side DSL has three components. There is the upgrade to the local loop, where this digital service is not compatible with an ordinary analog computer modem, but instead requires a special DSL modem on the end user's premises. Even then, at the other end of the local loop, a special switch, the digital subscriber line access multiplexer ("DSLAM"), must be installed to split voice (which will be routed to the telephone system) from data transport (which will be routed to the Internet). In Utah, the data is routed over US WEST's Asynchronous Transfer Mode ("ATM") network to an Internet service provider with compatible digital equipment. Finally, the ISP then transfers the data to and from the rest of the Internet.

¹ ArosNet, Burgoyne Computers Inc., CastleNet, Coastlink, DirecTell, EagleNet Online, Fibernet, I-80, InfoWest, Internet Connect, Internet Technology Systems, inQuo, Konnections, NETConnect, Connect A Net, PCFastNet, PDQ Internet, Redrock Internet, SISNA, Software Solutions, Utah Internet Services, VitrexNet, Vyzynz, Wasatch Communications Group, WebIt!, Web Guy Productions, Western Regional Networks, Xmission, XPressweb.

As far as the Utah Coalition can tell, US WEST is the only Utah provider of the first component of DSL-based Internet connectivity: the segment running from the end-user over the local loop to the DSLAM switches. In addition, with one exception, US WEST has refused to allow Competitive Local Exchange Carriers ("CLECs") to provide service for the data transport segment from the DSLAM switch to the Utah Coalition ISPs' premises and equipment. Under the tariff US WEST filed in Utah, US WEST is to be the sole provider of that circuit. (Attachment III)

This issue -- of competition in the data transport segment of DSL-based Internet access -- bears emphasis. Although US WEST told the Commission in earlier Section 706 dockets that it would make such interconnection available, its Utah tariff is to the contrary.² That tariff states (emphasis added):

Section 8.1.2

D.

....
2. MegaCentral Access Link

The MegaCentral Access Link is a Company-provided physical connection between a disclosed ATM Central Office or MegaCentral Service Point, and the MegaCentral customer premises.

US WEST has offered some technical grounds for its position, but the denial of interconnection is not subject to question. More recently US WEST has stated that it will abandon this position, purportedly in response to this Commission's rulings in these 706 dockets. US WEST has not, however, filed an amended tariff in Utah to allow a CLEC to provide data transport as part of DSL-based service.

The Utah Coalition understands US WEST's earlier comments to state that interconnections would be available for such services. Those statements were incorrect; until US WEST actually modifies its tariff, the statements are still incorrect. Although the discrepancy may simply be the result of a miscommunication between field offices and US WEST's Washington representatives, the inconsistency underscores the need for this Commission to be vigilant as to actual market practices when setting policy in this sensitive area.

² See Comments of US WEST, Inc., in CC Dkt. No. 98-78, Petition of the Association for Local Telecommunications Services ("ALTS") for a Declaratory Ruling Establishing Conditions Necessary To Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996 (June 18, 1998) at 28-34 (Enclosed in pertinent part as Attachment I), compare the US WEST data response in the Utah Public Service Commission informal complaint proceeding, as discussed infra (Enclosed in pertinent part as Attachment II).

Finally, as to the Internet access component of DSL-based connectivity, US WEST has acted to displace Utah Coalition ISP's in favor of its affiliated uswest.net service affiliate. Here is what happened.

II. The Anticompetitive Effects of US WEST's Utah DSL Roll-out.

On March 11, 1998 US WEST told the Utah Coalition ISP's that DSL would be available, and invited them to order the new service. That very day, several Utah Coalition ISP's requested retail loop and/or data transport service for their end-user customers. These ISP's have also made the investment in digital DSL-compatible equipment for the Internet access portion of the service. On April 6, 1998, US WEST filed its tariff and price list with the Utah Public Service Commission offering DSL under the title "MegaBit Services."

Several Utah Coalition ISPs already have been substantially delayed in entering the market for DSL-compatible Internet access service because of US WEST's initial refusal to allow a CLEC to provision data transport lines for DSL. A number of Utah ISPs had immediate access to CLEC fiber in April, 1998, but no access to equivalent US WEST data transport. These ISPs could have begun providing DSL-compatible Internet access in time to effectively compete with uswest.net, but for US WEST's refusal to allow a CLEC to provide data transport.

There remain severe problems in US WEST's marketing and sales practices, which discriminate against the Utah Coalition ISPs in favor of its affiliate uswest.net. Such service discrimination is critical to the Utah Coalition ISPs.

The Coalition membership competes in many critical respects on the quality and responsiveness of the services offered to homes and businesses. If the ISPs must put off their customers because of delays suffered at the hands of US WEST, it is the ISPs and not US WEST who must bear the brunt of consumer dissatisfaction. The customers at risk in such newly-developing high technology markets are "early adopters." These customers are critical to market penetration.³ When such customers are lost to slow wholesale service, retail competition delayed is retail competition denied.

Until or unless there is competitive access to the data transport component (from the DSLAM switches to the ISP connection), US WEST will remain the monopoly provider of this service. Yet it has failed to identify capacity needs for ISP customers, who therefore cannot plan their own market development. US WEST has not been forthcoming about available circuit, switch, and port capacity. Moreover, while US WEST has knowledge of which parts of the loop are suitable for DSL, the competing DSL's do not. US WEST has not hesitated to use that knowledge to target potential customers with access to loops which will support DSL for marketing. This advantage -- which stems directly from US WEST's control of the local loop --

³ See Geoffrey Moore, Crossing the Chasm, the standard text on high technology marketing.

is not available to the Utah Coalition ISPs. This situation presents the clear risk of dict\riminating in favor of uswest.net in using such targeting information.

US WEST has claimed that equipment is not available to support the DSL-based service requested by the retail customers of the Utah ISPs. US WEST knew, or should have known, that there were not sufficient capacity and facilities in place to assure that ISPs would be able to begin offering Internet access to customers through Us WEST's MegaBit Service. At least one ISP waited for nearly two months to be connected to the ATM network after the request for connection had been made and the ISP's line had been in place at the connection point with US WEST. US WEST has, however, apparently had no trouble in making connections for the DSL services offered through its affiliate, uswest.net.

Other customers have experienced delays and difficulties in obtaining MegaCentral Links (i.e., equivalent private line transport connections) and MegaCentral Ports from US WEST. US WEST knew how many ISP customers had requested the service and that it would need to provide them with high speed lines to support the MegaCentral service. Yet, it failed to do so, while continuing to provision its own ISP. As a result, Utah Coalition ISP's have lost DSL customers to US WEST's affiliate.

The loss of first-time DSL customers to uswest.net is especially harmful to the ISPs because US WEST has made sure that once those customers sign up with uswest.net, they will be reluctant to leave for another ISP. US WEST's DSL price list includes a "MegaSubscriber Change Charge" of \$75.00, a significant negative incentive to change providers. This is nothing more than another barrier to the ISPs' entry into the market for DSL subscribers. US WEST has since reduced the charge to \$45.00. This is still a significant sum: the anticompetitive disincentive remains firmly in place.

US WEST has also used its position as Utah's only provider of DSL on the local loop to market uswest.net to end users. U S WEST has established a toll-free 1-888 number for potential DSL customers to call to order service. The voice mail menu greeting callers makes uswest.net the first option, relegating its competitors to a collective, and anonymous, second option. Although the customer is calling US WEST for DSL service, not the uswest.net Internet service, the voice mail menu creates a clear and unmistakable link between DSL and uswest.net, with an equally clear and unmistakably anticompetitive effect.

When a customer calls US WEST to sign up for DSL service, the customer is correctly informed that he or she must select an Internet service provider that can accommodate a DSL connection. US WEST sales representatives have used this customer contact to urge the customer to sign up with its affiliate for Internet service. Apparently, US WEST's customer representatives either have not known or were unwilling to tell the customers that there are other DSL-compatible ISPs. In at least one instance, US WEST informed a customer that a certain ISP was not DSL compatible when, in fact, the ISP had repeatedly but unsuccessfully sought connection to the US WEST high speed data network.

US WEST's protocol for marketing DSL is different for customers of uswest.net than for customers of other ISPs. A uswest.net customer, for example, can obtain DSL-based service and Internet access service with a single phone call to a friendly US WEST representative. Customers of other Utah ISPs must make at least one call to US WEST and another to the ISP if they want comparable service. A number of customers who have been willing to tolerate this inconvenience have been slammed by U S WEST to uswest.net. ISPs' customers have been connected to uswest.net after the customers had specifically requested US WEST to connect the circuit to the independent ISP. Many telephone calls from both customers and ISPs have been required to correct the problem. Slamming is overtly and egregiously anticompetitive, suggesting the need for serious protective measures of the kind contemplated in the NPRM docket, rather than after-the-fact penalties.

US WEST has also mailed free uswest.net software and other marketing material to customers expressing interest in DSL services. Even aside from the privacy problems this reflects, the practice is also plainly anticompetitive. See Connecticut Dept. of Public Util. Control v. FCC, 78 F.3d 842, 847 (2nd Cir. 1996) (sharing confidential reseller marketing information anticompetitive). The practice underscores the need for protective measures to ensure competitive neutrality in providing the service, including sales and marketing support.

Just like the toll-free number, US WEST's website has favored its affiliate at the expense of competitors. Information and order forms for uswest.net are easily accessible for those seeking information on DSL. By contrast, some digging is required before information about competing DSL-qualified ISP's may be found. This website is yet another display -- and contact point -- for what is now a bottleneck telecommunications service. It should be neutral as to adjacent service markets where there is competition.

US WEST is also competing vigorously on price, notably in the form of promotional pricing for components of the DSL service. US WEST's initial promotion of DSL was reported in the Salt Lake Tribune on Monday, May 4, 1998. In the article, US WEST representatives touted the new technology and urged customers to sign up soon, offering "free" installation for the first 1,000 customers. In a correction published the following day, US WEST explained that the installation is not really free, only that the customers would not be charged for the technician's visit. Nevertheless, US WEST continued (for the duration of the offer, which has since expired) to promise a digital modem and a technician visit at no charge to the first 1,000 customers to sign up for DSL service. Some US WEST representatives have told potential customers that this offer would be available only to those also taking service from uswest.net. Careless handling of orders for competitors' customers has also meant that many of those customers lost out on the limited promotion. The Utah Coalition does not understand these to be "official" company policies, but finds the practices discriminatory and -- with no remedy available -- clearly anticompetitive.

The Utah Coalition filed an informal complaint before the Utah Public Service

Commission on these issues on May 13, 1998.⁴ The Coalition has not obtained relief, due largely to a recently enacted state law that allows an ILEC to commence offering any "new" telecommunications service virtually free of regulation. The Utah Code provides that new services may be offered by a "price list" instead of a tariff, and that the price list becomes effective five days after filing. Any party who thereafter may wish to contest any aspect of a price-listed service, must not only show that rates or services are unjust or unreasonable, but must also establish one of several other stringent conclusions as well.⁵ Even if this especially weighty burden is met, the Utah Public Service Commission is not authorized to require the utility to amend the price list. It may only revoke the authority of the utility to offer the price-listed service.⁶

Thus, the Utah Coalition ISPs are left with a take-it-or-leave-it proposition: they can accept the discrimination inherent in the service as filed and implemented, or they can try to compel the only provider of DSL service in Utah to withdraw it. Neither outcome is acceptable. The Utah Coalition not only believes that DSL technology is in the public interest, but its members have backed that belief with their money by investing substantial amounts in preparing to offer DSL-compatible Internet access services. The Utah Coalition urges the FCC to consider the effect of such state laws on competition in advanced services and to take appropriate action to preclude the states from frustrating the objectives of the federal Act.

The Utah market is also being tilted by an additional intangible -- but very significant -- asset now being given away for free to uswest.net: the US WEST brand name. The millions of dollars in advertising used to promote that brand name now create a competitive advantage for the affiliate to the detriment of other ISP's. Brand names matter in competition. See Federal Trade Comm'n v. Proctor & Gamble, 386 U.S. 568 (1967), where the Court held that Proctor & Gamble's ability to promote Clorox would represent an entry barrier to other potential competitors. To similar effect see also General Foods Corp. v. Federal Trade Comm'n, 386 F.2d 936, 945 (3rd Cir. 1967); Southern Pacific Communications Co. v. American Tel. & Tel. Co., 740 F.2d 980, 1001-02 (D.C. Cir. 1984) (extensive image advertising expenditures constituted a barrier to entry); Davis v. Southern Bell Tel. & Tel. Co., 1993 U.S. Dist Lexis 2003, *15 (S.D.

⁴ Utah Public Service Commission Docket No. 98-049-T17.

⁵ I.e. that (1) the utility has violated statutes or rules specific to the service; (2) there has been a material change in the level of competition; or (3) that competition has not developed and that revocation of the service is in the public interest. Utah Code Ann. § 54-8b-2.3 (1997).

⁶ Utah Code Ann. at § 54-8b-2.3(9)(a).

Fla. 1993) (the need for "corrective advertising" acts as a market entry barrier).⁷ Recognizing that prior advertising and good will create entry barriers is also to recognize what matters here: that the use of the "us west" brand constitutes a subsidy for its unregulated affiliate.

Finally, US WEST has also claimed that there are economies of scale in the provision of DSL services.⁸ The Utah Coalition believes that it is too soon to tell whether and to what extent such economies obtain. However, the very fact that US WEST has made the claim gives rise to real concern. If there are such advantages, they, together with control of the loop and the opportunity to discriminate against competitors, might soon foreclose competition in the DSL-based high speed markets.

III. Relief is required to Preserve and Promote DSL-Based Information Services Competition

With their story told, the Utah Coalition ISP's believe that there is a solid factual basis with which to answer the questions posed in the Commission's Notice of Inquiry.

How can the FCC ensure a competitive ISP market in markets where the ILEC or its affiliate is the only provider of DSL? (¶ 38)

and

How can the FCC ensure a competitive ISP market in markets where there are more ISPs than providers of last-mile facilities? (¶ 79)

Based on their experience in Utah, the Utah Coalition ISP's submit that the structures needed to preserve competition in this market will include

- non-discriminatory "dry copper" access to the local loop;
- unbundling of all components of DSL service;
- cost-based tariffing of the bottleneck components of DSL services; and
- stringent, verifiable, controls against discrimination in favor of ILEC affiliates

⁷ The Southern Pacific court defined an entry barrier as "(a)ny market condition that makes entry more costly or time-consuming and thus reduces the effectiveness of potential competition as a constraint on the pricing behavior of the dominant firm." 740 F.2d at 1001.

⁸It said so in unmistakable terms in its February Section 706 petition, at page 29.

competing in the Internet access portion of the market.

The Commission should also be vigilant lest state action, like the Utah statute discussed above, be used to thwart competition in these emerging markets. Preemption of state regulation inconsistent with the procompetitive policies urged here should also be considered. See Diamond Intl. Corp. v. FCC, 627 F.2d 489, 489 (D.C.Cir. 1980), where the court noted the existence of a duty to preempt state regulations which thwart the development of interstate communications.

Is access by retail customers to thousands of ISPs in the public interest? (¶ 79)

ISPs provide retail-level dial-up access to the Internet to anyone with a computer and a phone line. Without the ISPs, only businesses large enough to maintain their own networks could have Internet access. ISPs pioneered the new services which have created the demand to make the Internet universal and ubiquitous even for non-technical users. The ISP's thus serve a critical function in dissemination of network access. Some of the ISP's -- including members of the Utah Coalition -- have offered service in rural areas which would otherwise not be served at all.

The existence of the Utah Coalition ISP's is also evidence of (pre-DSL) flourishing competition. Such competition is critical to the public interest determination the Commission must make here. McLean Trucking Co. v. United States, 321 U.S. 67, 80 (1944).

Consideration of antitrust and anticompetitive issues by the Commission, moreover, serves the important function of establishing a first line of defense against those competitive practices that might later be the subject of antitrust proceedings.

Gulf States Utilities Co. v. Federal Power Commission, 411 U.S. 747, 751 (1973), The conditions necessary to protect such competition -- network access (for data transport or as dry copper) and non-discriminatory cost-based bottleneck DSL services -- are equally critical to the public interest.

Put the matter another way. The Utah Coalition has shown that its members' struggles are -- like the canary in the coal mine -- an early warning system against smothered competition in these emerging broadband markets. Unless the Commission acts, competition in these markets may expire before it has fairly begun. And the loss of competitors here may be a bellwether for the risks to competitors in other retail communications services.

Should the FCC depart from its prohibition of RBOCs bundling transmission services with customer premises equipment and/or enhanced services ? (¶ 82)

The answer here must be an emphatic "no." The Utah Coalition need not speculate about the "likelihood" of discrimination, or the "risk" of cross-subsidy. Its member ISP's know discrimination and cross-subsidy as facts of everyday business life in competing to provide DSL-based Internet access; the Coalition has accordingly made these facts part of the record here. The Commission should make it clear beyond question that the prohibition extends to bundling DSL-based transmission services with goods and services offered in competitive markets.

CONCLUSION

US WEST has not hesitated to leverage its control over the local loops to foreclose competition in other components of DSL-based high speed Internet access. This conduct offends not only the procompetitive policies of the 1996 statute and Section 706 in particular, but also the long-standing principles of common carriage.

The relief requested by the Utah Coalition simply restates the common law principles codified in Section 202: It is unlawful for a common carrier “to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services,” or “to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.”⁹ Applying these words to the DSL market in Utah means that US WEST may not deny essential services to a competing ISP, or discriminate against that ISP while providing that service to its unregulated affiliate.

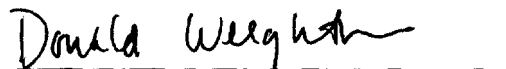
⁹ 47 U.S.C. § 202(a).

The Commission should act by requiring access to the local loop (as dry copper), unbundling high speed data transport from telecommunications services from end-user to the central office switch, and requiring tariffed non-discriminatory cost-based services where competition in DSL-based services is not feasible.

Respectfully submitted,

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September 14, 1998

ATTACHMENT

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Utah
CUIISP
DPU 01-004
ATTACHMENT A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Petition of the Association for Local Telecommunications)
Services ("ALTS") for a Declaratory Ruling Establishing)
Conditions Necessary To Promote Deployment of) CC Dkt. No. 98-78
Advanced Telecommunications Capability Under)
Section 706 of the Telecommunications Act of 1996)

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SUMMARY

Four months ago, U S WEST filed a petition for advanced-services regulatory relief demonstrating that CLECs and other data service providers were failing to serve smaller and rural communities in U S WEST's region. The petition set forth in detail how granting U S WEST regulatory relief would enable it to deploy data infrastructure deeper into the West and Midwest than any other carrier has done. It also demonstrated how U S WEST provided CLECs with unbundled, conditioned loops and collocation (including cageless collocation), which is all they need to be able to provide competitive services on an equal footing with U S WEST.

ALTS has now filed, in effect, an out-of-time third set of comments on that petition, claiming that the petition cannot be granted until the Commission completes general proceedings on the scope of Sections 251, 252, 271, and 706 of the Telecommunications Act, together with a broader rulemaking on collocation. But ALTS does not dispute the specific facts U S WEST presented, nor does it provide evidence that U S WEST is failing to provide CLECs with everything they in fact need from incumbents to provide competitive data services. Accordingly, notwithstanding ALTS's petition, the Commission should continue considering U S WEST's petition for individual relief on its own merits and promptly issue a decision.

In any event, ALTS makes no legal case for the declaratory ruling it seeks. ALTS asserts, without argument, that Sections 251, 252, and 271 necessarily govern incumbent LECs' provision of data services unless the Commission forbears from their application. But Congress made clear that the unbundling and discounted resale duties of Section 251(c) apply to carriers only in their capacities as "incumbent local exchange carriers," and these data services do not constitute "telephone exchange service or exchange access" — the services that define a LEC. Moreover, even if this section did apply, the Commission would still have authority under Section 251(d)(2) to exclude the non-bottleneck data facilities from the list that must be unbundled. As for Section 271, the Commission may use its statutory power to modify LATA boundaries to waive LATA restrictions for the limited purpose of enabling BOCs to bring data services to communities it could not otherwise economically serve. Finally, ALTS's proposed ruling would eliminate Section 706 as a tool for achieving Congress's infrastructure goals.

ALTS's request for relief makes no sense on policy grounds. ALTS's laundry list of technical demands is premised on the erroneous notion that CLECs are entitled to expropriate each and every innovation and investment that an incumbent LEC makes. ALTS does not attempt to distinguish facilities that are currently bottlenecks from those that CLECs can and do obtain from many sources, or even to distinguish the interconnection needed for voice services from that needed for data. ALTS's demands would squelch any incentive an incumbent would have to innovate and invest in infrastructure.

In short, competition in the data services market is in no way dependent on regulated access to incumbent LECs' advanced data facilities or networks. ALTS's requested relief offers no policy benefits capable of offsetting its substantial distortion of investment incentives.

III. THE SPECIFIC REGULATORY INTERVENTIONS THAT ALTS PROPOSES ARE UNNECESSARY BECAUSE U S WEST HAS STRUCTURED ITS DATA SERVICE OFFERINGS IN A WAY THAT ENABLES OTHER CARRIERS TO COMPETE.

ALTS's basic claim is that competition in the data communications market cannot come about unless incumbent LECs are required by governmental fiat to share their new data networks with their competitors, either on an unbundled basis at prices based on forward-looking cost, or on a resold basis with prices discounted from retail. As discussed above and in U S WEST's petition for regulatory relief, this notion is contrary to law, economics, and good policy. Moreover, the excessive unbundling and resale requirements that ALTS proposes are simply not needed to fulfill the procompetitive mandates of the 1996 Act. U S WEST's data services are offered in a manner which is fundamentally procompetitive and enables all competitors to take reasonable advantage of those U S WEST facilities for which current alternatives may be limited. In this section, U S WEST responds to ALTS's laundry list of allegations concerning the adequacy of the interconnection its members receive.

A. U S WEST's xDSL Services.

In its petition for regulatory relief, U S WEST demonstrated that applying Sections 251 and 271 to its xDSL services makes it impossible to bring those services to

hundreds of thousands of customers in the less urban areas of U S WEST's territory. As a grant of the ALTS petition would continue to deny these customers those services, it is appropriate to discuss in some detail how U S WEST offers its xDSL services.

First, while it is by no means the only available regulatory choice, U S WEST is offering the entirety of its xDSL (MegaBit) services as basic telecommunications services. The link between the subscriber and the xDSL equipment (MegaSubscriber service) is provided pursuant to intrastate tariffs, and the intraLATA link between the DSL equipment and the ISP (MegaCentral service) is provided pursuant to either intrastate or interstate tariffs as appropriate. Therefore, MegaBit services are subject to the Commission's Open Network Architecture rules, which means that U S WEST's Internet access services must connect to the U S WEST MegaBit services on the same terms and conditions as are available to competing ISPs. U S WEST has not sought to waive these requirements in its request for regulatory relief. Thus, ISPs have a full and fair opportunity to use U S WEST's xDSL services on a non-discriminatory basis.

Second, U S WEST will make available to CLECs, pursuant to Section 251(c), the unbundled conditioned loops necessary to deliver xDSL service to an end user. While loop alternatives are rapidly appearing and growing in a number of markets (with cable modems in particular showing enormous growth^{22/}), U S WEST's loops remain a primary source of connectivity to many end user customers, particularly residential customers. A loop must be

^{22/} Illustrating the great potential of these services, Microsoft and Compaq have just announced that they are investing \$ 425 million in Road Runner, which provides content and high-speed Internet backbone services to approximately 90,000 cable modem customers. "Computer Companies Buy Stake in Road Runner Cable Modem Service," Comm. Daily at 2 (June 16, 1998). The same article reports that Road Runner's cable modem service is potentially available to 27 million cable households. Id. at 3.

"conditioned" to be usable for xDSL services, meaning that bridge taps and load coils must be removed. To the extent reasonable and feasible (and this is a constraint on U S WEST's provision of xDSL services as well), U S WEST will make conditioned loops available to CLECs for the provision of xDSL and/or local exchange services. With respect to these loops:

- A "conditioned loop" means just that — a loop without bridge taps or load coils. ALTS refers something which it calls a "DSL loop." As far as we can determine, ALTS's "DSL loop" is a loop which contains all of the electronics that a competitor can obtain and put in place as easily as U S WEST can. U S WEST does not offer a "DSL loop" as ALTS defines it as an unbundled network element for the reasons described above.
- A purchaser of a conditioned loop, just like the purchaser of any other kind of unbundled loop, must be a carrier and agree to undertake the carrier responsibilities attendant to control of the loop. This means that the purchaser of the unbundled loop will completely control the loop, and will be responsible for the customer's voice traffic over that loop (if any) as well as its data services. U S WEST will, of course, enter into an interconnection agreement with such a carrier if the carrier decides to hand off the customer's voice traffic for further delivery to U S WEST's local exchange customers.
- Under current technology, loops created with Digital Line Carrier ("DLC") or similar technology cannot be used to provide xDSL services. U S WEST is hopeful that this limitation on xDSL deployment can be overcome by the end of the year.

Third, U S WEST will make collocation space available for competitors to collocate transmission equipment, which includes xDSL electronics, in U S WEST central offices. Such collocation will include the ability to interconnect the unbundled conditioned loops with the carrier's xDSL electronics to create an xDSL service. U S WEST's user-friendly collocation policies are briefly described in Part III.B.

Fourth, U S WEST will enter into agreements with competitive data carriers to interconnect their respective data networks. Thus a competitive data service provider will not

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need to create a complete network in order to provide its customers with the ability to reach the maximum number of potential customers. U S WEST will negotiate in good faith other reasonable terms to govern the interconnection of data networks.

B. U S WEST's Interconnection and Collocation Policies.

ALTS raises a number of demands concerning interconnection in general, suggesting that the Commission predetermine the outcome of interconnection negotiations in a number of areas. For the most part, ALTS's demands go well beyond any legitimate authority the Commission might have to interfere with ongoing interconnection negotiations and the statutory process for settling interconnection disputes, at least on the skimpy and anecdotal record ALTS has submitted. Despite the generally unmeritorious nature of ALTS's demands, U S WEST takes this opportunity to describe how some of these issues have been working themselves out in actual negotiations, just as Congress envisioned.

In its Petition, ALTS asks the Commission to decree that CLECs have "unbundled access" to advanced data facilities. (ALTS Pet. 14-15) This demand frames perhaps an entire regulatory approach to data communications. U S WEST will interconnect with competitive data services, and will offer as unbundled network elements the facilities necessary to permit competitive carriers to offer advanced data services, including unbundled conditioned loops and collocation space for xDSL equipment. Such unbundled loops include loops capable of carrying the various xDSL signals, and of interconnecting to a competitor's xDSL equipment in a U S WEST central office. To the extent that mid-loop regeneration capability can actually permit extension of xDSL service beyond the current 18,000-foot limitation on loop lengths, U S

WEST will offer such regeneration capability as a type of loop conditioning. However, U S WEST will not invest in advanced data capabilities for CLECs, nor (for the reasons described above) is it necessary for it to do so under the Act.

In addition, ALTS requests that the Commission set up a number of complex rules to limit and govern the negotiations for physical collocation space. (ALTS Pet. 18-22) U S WEST has been making significant progress in negotiating with CLECs in this area. Among the collocation matters which have been negotiated:

- U S WEST offers a SPOT collocation option, which permits CLECs to aggregate unbundled network elements at a single U S WEST frame in the central office. SPOT collocation includes a common frame and tie cables in 100-pair increments (called expanded interconnection channel terminations) which provide a demarcation point for the unbundled network elements. Thus the SPOT frame also serves as a point of interface for all unbundled networks ordered by the CLEC.
- U S WEST's SPOT collocation option is clearly distinct from the BellSouth virtual collocation option that ALTS criticizes in its petition. *Id.* at 20. It is U S WEST's understanding that BellSouth allows CLECs to place a "connection" frame in its central office. U S WEST will permit a CLEC to place a frame in their collocation space. In addition, U S WEST's SPOT collocation option offers CLECs a more cost-effective and efficient method of combining network elements because it allows multiple CLECs to share the SPOT frame and assorted infrastructure.
- Cageless physical collocation is a new concept that U S WEST is introducing in response to the demands of the marketplace through the negotiation process. U S WEST offers cageless physical collocation in increments of nine square feet, depending on walkway space requirements. U S WEST anticipates that cageless physical collocation will be more efficient and less costly for CLECs because it does not require a cage or one-hundred-square-foot allotments of collocation space.
- U S WEST permits CLECs to connect two collocation spaces via tie cables. This can be done either on the SPOT frame itself or with tie cables between adjacent CLEC cages.

- U S WEST does not offer caged physical collocation space in increments of less than one hundred square feet. Given the fact that each collocation cage requires construction and walkways around the cage, smaller increments are simply not efficient. However, U S WEST's cageless collocation options should make this issue moot.
- ALTS's demand that the Commission impose TELRIC pricing on collocation agreements (ALTS Pet. 21) cannot stand in the face of the Eighth Circuit's decision in Iowa Utilities Board v. FCC and the court's subsequent mandamus order enforcing its mandate.
- U S WEST is trying to develop standard rates for collocation so that neither U S WEST nor CLECs are required to prorate back construction costs.

Further, ALTS questions whether incumbent LECs are providing adequate access to operational support systems ("OSS"), alleging a number of incidents concerning the provision of OSS for traditional telephone services. (ALTS Pet. 22-23). ALTS ignores that there is a fundamental difference between systems supporting the existing circuit-switched voice network and systems developed for and dedicated to advanced data communications services. With respect to data services, OSS is part of network management, is built into the electronics that route the data, and has nothing to do with the underlying voice network. Thus, unthinking extension of the Commission's voice OSS rules to data services would be unwise.

ALTS raises numerous other suggestions which seem to have little to do with anything, much less anything to do with bringing data services to communities that are not currently being served. ALTS condemns the successful court challenges brought by a number of incumbents, id. at 32, and generically (and unhelpfully) urges the Commission not to interfere with specific state proceedings, id. at 38-45. ALTs also asks the Commission to solve a wide variety of perceived and real provisioning issues that have nothing to do with the provision of data services by either incumbent LECs or CLECs. See, e.g., id. at 13, 17, 22-26. These

ATTACHMENT

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Utah
CUIISP
DPU 01-001

INTERVENOR: Division of Public Utilities

REQUEST NO: 001

Please provide a detailed explanation of USWC's reasons for not being willing to allow CLEC's to provide the MegaCentral Access Link. Please include detailed technical concerns, as well as policy and business reasons.

RESPONSE:

This is a new, competitive technology and its eventual success or failure in the marketplace will depend on meeting customer expectations. This is true not only for MegaSubscriber customers who simply want to turn their computer on and be connected to a service that works, but also for the MegaCentrals serving those individual customers. With the ability to monitor, test and trouble shoot the entirety of the MegaBit transport system, U S WEST can offer the maximum customer service to MegaSubscriber and MegaCentral customers.

To illustrate this point, imaging what would happen if a particular MegaCentral had its transport from the MegaCentral host site to the central office provisioned via a carrier other than U S WEST. If a MegaSubscriber customer began experiencing problems with their service, they would likely call U S WEST to report the problem, like they would with problems in their phone service. U S WEST then would begin trouble shooting the service outage, possibly conducting line testing, dispatching technicians or whatever else was necessary to determine the cause of the problem. If it were then determined that the problem existed in the CLEC transport piece, how and when would the necessary repairs be made and who would be responsible to the MegaSubscriber customer? In any case, in the eyes of the MegaSubscriber customer, U S WEST would take the blame. U S WEST would have spent significant time, effort and money which it would not be able to recover from the actual source of the problem. Further, the MegaBit Services offering was designed, developed and deployed as an end to end product offering from U S WEST. All of the associated systems (i.e. testing, monitoring, reporting, etc.) have not been engineered to allow for the presence of a third party. Accordingly, these types of costs have not been factored into the rates and costs for either MegaCentral service or MegaSubscriber service. Indeed, it may well be that in order to account for such a third party arrangement, the resulting system design changes, when factored into the cost calculations, would result in a higher price point for MegaCentral or MegaSubscriber service. In any event, a service configuration utilizing a CLEC would require new cost studies and amendments to the current tariff before this Commission.

As currently provisioned, U S WEST can determine when a network outage occurs and can fix the problem without having to first receive a trouble call from a customer. Finally, the ability to provision and therefore monitor the service

end to end allows the company to solve service problems in the shortest time possible, a point that is important to both MegaCentral and MegaSubscriber customers.